

Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

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Reallocation of Television Channels
60-69, the 746-806 Band

)

) ET Docket No. 97-157

To the Commission

**COMMENTS ON THE NOTICE OF PROPOSED RULE MAKING
SUBMITTED BY
THE ASSOCIATION FOR MAXIMUM SERVICE TELEVISION, INC.
AND THE NATIONAL ASSOCIATION OF BROADCASTERS**

September 15, 1997

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SUMMARY

The Association for Maximum Service Television, Inc. and the National Association of Broadcasters recommend modest changes to the Commission's proposal to reallocate the 746-806 MHz band (television channels 60-69) so as to more fully achieve Congressional objectives and wise spectrum management. Congress directed the Commission to make spectrum available for public safety, but it has also mandated a quick transition to digital television that avoids interfering with the public's free, over-the-air television service. Furthermore, it has expressed its interest in maximizing the value of "refarmed" spectrum.

The Commission will better serve all of these objectives by allocating the spectrum in the 60-69 band in two contiguous blocks -- 24 MHz at channels 66-69 (782-806 MHz) to public safety and 36 MHz at channels 60-65 (746-782 MHz) for other services. This alternative allocation would provide public safety services with the same amount of spectrum as the proposed allocation and in just as useable a form. During the transition to digital television, a block allocation of public safety at 66-69 would increase the flexibility to resolve interference problems, coverage shortfalls, and dislocations of low power and translator stations that will no doubt arise in the DTV implementation. Such an allocation would also reduce interference to existing television stations. After the transition, a block allocation would increase the utility (and thus the value) of the remaining 36 MHz of spectrum not allocated to public safety. This block of spectrum, much more than splintered allocations of 12 or 18 MHz each, could be used for broadband video services as well as narrowband services such as land mobile and other applications.

We also urge the Commission to utilize existing resources to assist in its future rulemaking relating to licensing and service rules in the 746-806 MHz band. In developing proposed sharing rules for the band, the Commission should look to the extensive record already amassed regarding the protection of analog television stations by land mobile operations.

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To the Commission

The Association for Maximum Service Television, Inc. ("MSTV")^{1/} and the National Association of Broadcasters ("NAB")^{2/} hereby comment on the Commission's Notice of Proposed Rulemaking in the above-captioned docket (adopted July 9, 1997, rel. July 10, 1997) (the "Notice") which proposes to reallocate the 746-806 MHz band, currently comprising television channels 60-69. MSTV and NAB have been leaders in forging the path that the television industry will take in its transition to digital.^{3/} Channels 60-69 will play an important role in that transition and will be

^{31/} See Joint Broadcaster Comments (Nov. 30, 1988); Joint Broadcaster Comments (Dec. 20, 1991); Joint Broadcaster Comments (Jul. 17, 1992); Joint Broadcaster

(continued...)

necessary to the life of the existing television service that must survive until the digital transition is complete.

While Congress has mandated that the Commission allocate 24 MHz of the 60 MHz in the channel 60-69 band for public safety needs, it has also mandated a quick transition to digital television that avoids interfering with the public's free, over-the-air television service. If the Commission is to accomplish both of these congressionally mandated goals, we believe that it should make some adjustments to the Notice's proposed public safety allocation so that spectrum use is more efficient and disruption to the public's television service reduced. In addition, MSTV and NAB urge the Commission to use the existing record on land mobile/television sharing as much as possible so that ensuing rulemakings on this matter can be completed as expeditiously as possible.

^{3/}(...continued)

Comments (Nov. 16, 1992); Broadcasters' Proposed ATV Allotment/Assignment Approach ("Broadcasters Allotment/Assignment Approach"); Joint Broadcaster Comments (Nov. 20, 1995); Joint Broadcaster Reply Comments (Jan. 22, 1996); Joint Broadcaster Comments (Jul. 11, 1996); Broadcasters Caucus Petition for Further Notice of Proposed Rulemaking (Jan. 10, 1997); Broadcasters Caucus Reply Comments (Jan. 24, 1997); Broadcasters Caucus letter to Chairman Hundt (Mar. 21, 1997); MSTV, Broadcasters Caucus and Other Broadcasters Petition for Clarification and Partial Reconsideration of the Fifth and Sixth Report and Orders (June 13, 1997); MSTV and the Broadcasters Caucus Comment on and Opposition to Petitions for Reconsideration of the Fifth and Sixth Reports and Orders (July 18, 1997); MSTV and NAB's Reply to Oppositions to Petitions for Reconsideration of the Fifth and Sixth Reports and Orders (July 31, 1997), submitted in MM Docket No. 87-268 (hereinafter, the "DTV Proceeding").

I. PUBLIC SAFETY SHOULD BE ALLOCATED A CONTIGUOUS BLOCK OF 24 MHZ CONSISTING OF CHANNELS 66-69.

The reallocation of television channels 60-69 requires a long view that encompasses both the public safety and television services' immediate needs and the future demands on the spectrum. The Notice proposes to allocate 24 MHz at 764-776 MHz and 794-806 MHz (channels 63-64 and 68-69) to the fixed and mobile services and to designate this spectrum for public safety use as defined in 47 C.F.R. § 90.15.^{4/} The Notice further proposes to allocate the remaining 36 MHz at 746-764 MHz and 776-794 MHz (channels 60-62 and 65-67) to the fixed, mobile and broadcasting services. This allocation does not make the best use of the spectrum for the long term and may sacrifice efficiency even over the next eight years when public safety, analog and digital television will all have to coexist. Therefore, we urge that the Commission adopt an alternative allocation for public safety of 782-806 MHz (channels 66-69).

The shift in allocation proposed herein is in keeping with the Balanced Budget Act, which was passed subsequent to the release of the Notice.^{5/} The Budget Act requires the Commission to allocate 24 MHz for public safety services and 36 MHz for commercial use by January 1, 1998. Although the Budget Act does not specify which channels in the 60-69 range should be reallocated to public safety, the Budget Act does make clear that the transition to DTV and assignment of public safety licenses must

^{4/} Notice, ¶ 1.

^{5/} See Balanced Budget Act of 1997, P.L. No. 105-33, (amending Title III of the Communications Act by adding section 337, entitled "Allocation and Assignment of New Public Safety Services Licenses and Commercial Licenses") (hereinafter the "Budget Act").

occur fairly rapidly and that the FCC should seek to maximize the value of the spectrum it ultimately auctions. The allocation proposed in the Notice does not realize these goals as effectively as would the alternative allocation proposed herein. As discussed below, the alternative allocation would improve spectrum efficiency, reduce interference to existing television operations, increase flexibility for DTV operations and relocating low power television stations and translators, and increase the utility of the remaining 36 MHz in the 60-69 television band. The alternative, therefore, will speed the transition to DTV and make it less disruptive to the public's existing television service. Moreover, the allocation of 36 MHz of contiguous spectrum will markedly increase the utility of the spectrum for which commercial users will ultimately bid.

A. Block Allocation of 36 MHz Would Increase Spectrum Value.

The allocation of channels 60-69 should be made with a view to the most desirable partitioning of the spectrum after the transition to DTV is complete. Two block allocations -- of 66-69 for public safety services and 60-65 for other services -- would result in the most efficient use of the spectrum.

1. A Splintered Allocation Reduces the Utility of the Spectrum.

The Notice's proposed allocation would result in four discrete blocks of spectrum, of 12-18 MHz each. Dividing the spectrum into these slivers could have at least two unwanted results.

First, public safety services would effectively have three "frontiers" to protect (as would those services awarded licenses in the remaining 36 MHz). Services operating in the each of the four blocks of spectrum would have to devote more

spectrum to guard bands to prevent interference and could suffer more interference than otherwise under an alternative allocation. In the DTV Proceeding, public safety commenters complained of the difficulties that currently exist when land mobile and television operate on adjacent channels.^{6/} To reduce such problems in the future, whether between public safety and television or between public safety and another service operating in the 60-69 band, the Commission should reduce the number of potentially problematic adjacencies by concentrating public safety in one portion of the band. The PSWAC Report recommended as much by urging the allocation of contiguous spectrum for public safety.^{7/}

Second, the proposed allocation would deprive both public safety services and the services offered in the remaining 36 MHz the flexibility to offer broadband or other spectrum-intensive services that require more than 12 MHz of contiguous spectrum. The value that potential licensees place on larger spectrum blocks has been evident in the Commission's spectrum auctions. Potential licensees take into account the increased interference burdens and reduced flexibility that smaller spectrum slivers entail

^{6/} See e.g., Comments of the California Department of General Services (Nov. 22, 1996) at 6-7; Comments of the County of Los Angeles (Nov. 22, 1996) at 9-10; Comments of the New York Police Department (Nov. 22, 1996) at 5-7; Comments of the New York Metropolitan Advisory Committee (Nov. 21, 1996) at 2-7; and Comments of the Association of Public/Safety Officials (Nov. 19, 1996) at 2-4, filed in the DTV Proceeding.

^{7/} Final Report of the Public Safety Wireless Advisory Committee (Sep. 1996) at 22-23.

in the amount they are willing to pay for spectrum.^{8/} The Commission staff recognized as much in a January 1997 report on spectrum management.^{9/} This report touted the importance of flexibility in spectrum management, including the flexibility for licensees to determine what technologies they will use and "both the amount of spectrum they occupy and the geographic area they serve."^{10/} MSTV and NAB oppose any abdication of the Commission's spectrum management responsibilities, but the Commission should at this stage preserve the flexibility to allocate the 36 MHz down the road for broadband services or for land mobile and other narrowband services. Larger blocks of contiguous spectrum enhance the flexibility licensees have to offer spectrum-intensive technologies or to disaggregate if their uses are less demanding.

Public safety does not require a splintered allocation to meet its spectrum needs. Currently, public safety services operate with a 3 MHz separation in some cases^{11/} and a 5 MHz separation in others.^{12/} A contiguous block of 24 MHz would

^{8/} Statement of Professor Jerry A. Hausman at 13, submitted as appendix D-1 to the Broadcasters' Comments on the Sixth Notice of Proposed Rulemaking (Nov. 22, 1997) filed in the DTV Proceeding.

^{9/} Rosston, Gregory L. and Steinberg, Jeffrey S., Using Market-Based Spectrum Policy to Promote the Public Interest (Jan. 1997).

^{10/} Id. at 11.

^{11/} See 47 C.F.R. § 90.311(a) (separation between base and mobile transmit frequencies is 3 MHz for two frequency land mobile operations in the 470-512 MHz band).

^{12/} See 47 C.F.R. § 90.174(i) (frequencies in the 450-470 MHz band are assigned with the mobile station transmit frequency 5 MHz above the paired base station transmit frequency).

be sufficient to accommodate the minimum separation requirements between public safety transmit and receive frequencies.

2. A Block Allocation Could Make 36 MHz Far More Suitable For Broadband Video Services.

By adopting a 36 MHz block allocation, the Commission would preserve the opportunity to authorize broadband video use in this spectrum -- the demand for which is steadily increasing. In recent years, the Commission has allocated significant spectrum blocks to narrowband uses such as PCS, cellular and paging. Now, the Commission should preserve flexibility to use this newly available spectrum to facilitate the development of broadband services.

Although broadband video operations continue to expand,^{13/} no new spectrum has been allocated for such use. The continued development and implementation of these services benefit the public by increasing competition and diversity of choices. For example, the Commission recently noted that "[t]he continuing expansion of DBS, MMDS, and overbuilding is beginning to create an alternative to cable."^{14/} The Commission went on to state that "[a]s non-cable video programming distributors expand further in the future, consumers may be able to rely more on competition for the benefits of lower prices and improved programming choices and less on regulation."^{15/} By adopting a contiguous 36 MHz allocation, the Commission can

^{13/} See generally Third Annual Report, Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, CS Docket No. 96-133, 12 FCC Rcd. 4358 (adopted Dec. 26, 1996, rel. Jan. 2, 1997).

^{14/} Id. ¶ 128.

^{15/} Id.

retain the flexibility to use this spectrum for these and other expanding broadband video services.

B. A Block Allocation Would Better Protect Channel 60-69 TV Licensees.

The public safety allocation proposed in the Notice is asserted to be consistent with the commitment made in the DTV Proceeding that "all existing analog and DTV full service broadcast operations on channels 60-69 will be fully protected during the transition, which is targeted for completion in the year 2006."^{16/} To test this hypothesis, the Notice requests comment on possible interference implications of the proposed allocation, whether alternative allocations are preferable, how NTSC permittees and applicants should be treated and what modifications television licensees should be permitted in the reallocated channels.^{17/} MSTV and NAB believe that the alternative allocation we propose will make it easier to ensure that public safety use of the spectrum is indeed consistent with the Commission's commitment to safeguard the analog television service and sponsor the quick and healthy growth of the DTV service. In addition, we propose below that the Commission allow as much flexibility as possible for broadcasters in meeting the challenges of the digital age.

1. Analog Stations

As of the release date of the Notice there were 95 analog television licensees or permittees in the 60-69 band, in addition to applications for 33 more stations

^{16/} Notice, ¶ 6, citing DTV Proceeding, Sixth Report and Order, ¶ 80 and Fifth Report and Order, ¶¶ 99-100 (rel. April 21, 1997). See also Notice, ¶¶ 17 and 21.

^{17/} See id. ¶¶ 12 and 21.

that the Commission has accepted for filing.^{18/} A survey of the licensees and permittees listed in Appendix B to the Notice reveals a number of facts.

First, the number of licensees on each of channels 60-69 is fairly evenly distributed. For example, channels 66 and 67 do not have appreciably more licensees than do channels 63 and 64. Thus, the Notice's assertion that the proposed allocation consists of "channels [that] are relatively lightly used by full service television broadcasting"^{19/} would be equally true of the allocation of channels 66-69 to public safety as proposed herein.

Second, the licensees that currently operate on channels 60-69 are by and large among the more fragile enterprises in the television business -- enterprises that the Commission has championed in the past.^{20/} For example, of the 73 operating stations, at least 55 %^{21/} are unaffiliated with either an established network (ABC, CBS, FOX, NBC, PBS) or an emerging network (UPN, WB). At least 16% are affiliated with an emerging network and at least 14% are non-commercial stations. Any decision to crimp the expansion of these NTSC stations to reach a population comparable to that served by their competitors will reduce the chance that such stations can successfully transition to

^{18/} *Id.* ¶ 21.

^{19/} *Id.* ¶ 11.

^{20/} *See, e.g.*, DTV Proceeding, Fifth Report and Order, ¶ 104 ("We also acknowledge the financial difficulties faced by noncommercial stations and reiterate our view that noncommercial stations will need and warrant special relief from measures to assist them in the transition to DTV."); *id.* ¶¶ 76-86 (allowing smaller-market stations, independent stations and noncommercial stations more time than larger-market network affiliates to construct and implement DTV facilities).

^{21/} We were not able to establish the affiliation of two stations.

digital, since that transition will be funded by proceeds from their analog service. By the same token, the Commission should take into account that any adverse interference consequences of its allocation decision will fall most heavily on these stations.

A block allocation of channels 66-69 for public safety would prove less disruptive to the analog station incumbents than would the allocation proposed in the Notice because it would entail interference risks only to television stations on adjacent channel 65 instead of to NTSC stations on adjacent channels 62, 65 and 67. For similar reasons, public safety services could more efficiently operate in a block allocation of 24 MHz rather than in splintered blocks of 12 MHz each.

2. DTV Stations

The Sixth Report and Order in the DTV Proceeding made only 15 assignments of DTV channels in the 60-69 range. However, there are now at least 36 pending petitions for reconsideration that request adjustments to the DTV channel plan that could increase the number of DTV assignments in these channels, particularly in light of the recent submission of laboratory results regarding DTV-to-DTV adjacent channel interference and the need for additional protection. MSTV and NAB, joined by other broadcasters, requested that limited exceptions be made to the Commission's policy against making DTV assignments in the 60-69 range where such assignments would greatly increase the functionality of a DTV assignment or reduce interference to existing service.^{22/}

^{22/} See Petition for Clarification and Partial Reconsideration on the Fifth and Sixth Reports and Orders Submitted by MSTV, the Broadcasters Caucus and other

Even if the Commission grants very few of the petitions for reconsideration filed, there will likely be an increase of DTV assignments in the 60-69 range that will have to coexist with public safety -- either at the outset or as the DTV transition progresses. Once DTV signals begin to be transmitted next year, data will begin to roll in that could make new DTV assignments in the 60-69 range in the public interest. For example, we may learn that interference effects to the digital service could be different than predicted or that the DTV service area is smaller than predicted and requires power increases. In addition, more translators and low power television stations may be displaced than was initially contemplated. Any and all of these scenarios, as well as others, could necessitate greater use of channels in the 60-69 range for DTV.

Looking ahead to the need for flexibility in the DTV roll-out, the Commission should grant a block allocation for public safety in channels 66-69 that interferes less with new DTV operations and enhances efficiency of public safety's use of its 24 MHz of spectrum in this band. Such an allocation would fortify the policy of both the Commission and Congress to avoid disruption during the DTV transition and to meet the 2006 give-back date.^{22/}

^{22/}(...continued)

Broadcasters (June 13, 1997) at 22; and Comment on and Opposition to Petitions for Reconsideration of the Fifth and Sixth Reports and Orders Submitted by MSTV and the Broadcasters Caucus (July 18, 1997) at 31, filed in the DTV Proceeding.

^{23/} DTV Proceeding, Fifth Report and Order, ¶ 76.

II. IN CRAFTING ITS SECOND NOTICE, THE FCC SHOULD LOOK TO THE INFORMATION GATHERED IN GENERAL DOCKET NO. 85-172.

The Notice indicates that the Commission plans to issue a second notice of proposed rulemaking relating to licensing and service rules in the 746-806 MHz band. Among other things, this second notice would address the protection of the public's service from the existing analog TV and new DTV stations by licensees in the reallocated spectrum.^{24/} In developing proposed sharing rules for the 746-806 MHz band, the Commission should look to the extensive record already amassed regarding the protection of analog television stations by land mobile operations. Specifically, the Commission should look to the information underlying the current UHF-TV/land mobile sharing rules codified in Part 90 (Subpart L) of the Commission's rules^{25/} and to the extensive record and series of reports developed in connection with General Docket No. 85-172 on Further Sharing of the UHF Television Band by Private Land Mobile Radio Services.^{26/} The substantial efforts already made by the Commission and the industry to develop workable sharing criteria for land mobile and analog television operations should be relied upon to facilitate the expeditious establishment of appropriate licensing and service rules for channels 60-69.

^{24/} Notice, ¶ 17.


^{25/} 47 C.F.R. §§ 90.301-90.317.

^{26/} See Further Sharing of the UHF Television Band by Private Land Mobile Radio Services, Gen. Docket No. 85-172, Notice of Proposed Rulemaking, 50 Fed. Reg. 25587, published June 20, 1985; Office of Science and Technology, Analysis of Technical Possibilities for Further Sharing of the UHF Television Band by the Land Mobile Services in the Top Ten Land Mobile Markets, FCC/OST R83-3 (October 1983).

Of course, additional information-gathering and analyses will be required to develop appropriate interference protection criteria for DTV operations (both to and from public safety) in this band. The Commission and the industry will need to evaluate carefully the unique characteristics of the digital television service before appropriate criteria can be established.

Respectfully submitted,

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